REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA NOS. 703-04 OF 2006**

% **Date of Decision** : 3rd September, 2007.

K.P.JAIN & ORS. .... Appellants.

Through Mr. Ravinder Sethi, Sr. Advocate with Mr.Sumit Bansal, Advocate.

VERSUS

D.D.A. .... Respondent.

Through Mr. Rajiv Bansal and Mr. Gyaltsen, Advocates

CORAM:
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

SANJIV KHANNA, J:

1. The appellants, namely Mr. K.P. Jain and Mrs. Sushila Jain have impugned judgment dated 5th December, 2005 and Order dated 8th February, 2006 to the extent that they have been denied interest on

Rs.18,35,646/-, which was deposited with the respondent-Delhi Development Authority (hereinafter referred to as DDA, for short).

2. The facts are virtually undisputed. The appellants purchased property no. D-5, Maharani bagh, New Delhi from the erstwhile owners. The aforesaid property was a leasehold property on which DDA as superior lessor was entitled to claim 50% unearned increase in the value of the land in case of transfer. The appellants on 30th June, 1989 deposited Rs.18,35,646/- towards unearned increase with DDA. However, the said application remained pending and neither mutation nor any document was executed in favour of the appellants.

3. DDA also came up with a Scheme for conversion of leasehold properties into freehold. On 10th June, 1999, the appellants moved an application before DDA stating that their earlier request dated 30th June, 1989 for mutation and execution of documents of transfer in their favour should be treated as withdrawn and Rs.18,35,646/- be refunded. On 24th August, 1999, the appellants filed an application for conversion of the leasehold property into freehold and regularising the transfer claiming themselves to be the first transferees and accordingly paid the first

installment. In other words the Scheme itself had provision for payment of transfer charges or unearned increase at reduced rates and conversion charges for conversion of leasehold rights into freehold. The entire aforesaid charges in terms of the Scheme formulated by DDA were paid on 16th February, 2001.

4. In spite of repeated requests by the appellant, DDA did not refund Rs.18,35,646/- and raised a dispute i.e. whether the said amount could be refunded. Appellants filed writ petition in this Court being W.P.(C) Nos. 911-12/2005 for refund of the aforesaid amount. Learned Single Judge in his detailed judgment dated 5th December, 2005 allowed the writ petitions and directed refund of Rs.18,35,646/-, inter alia, holding that in all cases where request for transfers were pending and no document in favour of the transferee had been executed, payments were required to be made under the conversion scheme and no further amount towards unearned increase was payable. DDA was, therefore, required to refund the unearned increase of Rs.18,35,646/- paid earlier in 1989. Learned Single Judge relied upon circulars and clarification issued by the Government of India and it was held that only amount stipulated under the

Scheme was required to be paid by the appellants and unearned increase of Rs.18,35,646/- was required to be refunded. Accordingly, the Writ Petition was allowed. DDA has accepted the said judgment and has not filed any appeal against the said decision.

5. The appellants claim that Rs. 18,35,646/- had remained with DDA from 30th June, 1989 till payment was made in terms of Order dated 5th December, 2005 and on this amount DDA should pay interest @ 18% per annum. It was submitted that the appellants had paid conversion charges and transfer charges as per the conversion scheme and DDA was not justified in retaining and delaying payment of Rs.18,35,646/-.

6. We do not think that the appellants are entitled to interest on Rs.18,35,646/- till conversion charges were paid on 16th February, 2001. The appellants on their own had on 30th June, 1989 paid the unearned increase which was payable under the terms of the lease. Though DDA did not execute any document in favour of the appellants and carry out mutation, the delay and default on the part of DDA went to the advantage and benefit of the appellants as after the conversion Scheme was introduced, the transfer charges or unearned increase got reduced. In terms of the said Scheme, the appellants had the advantage of paying

substantially lower amount, which advantage the appellants have availed of. The question of refund of unearned increase arose only after the full payment of the conversion charges including transfer charges were paid on 16th February, 2001 and not before the said date. The appellants could not have asked for refund of the unearned increase of Rs.18,35,646/- paid by them before the conversion charges were paid, as admittedly there was transfer of the leasehold rights and in terms of the lease deed, which continued and the transfer was regularised on payment as per the Scheme. Under the terms of the lease, 50% of the unearned increase was payable. The terms of the original lease were modified and altered as per the Scheme when full payment was made on 16th February, 2001. It may also be mentioned here that in the letter dated 10th June, 1999, by which the appellants had withdrawn their application for transfer of the leasehold rights, no claim for interest was made and on the said date no application for conversion under the Scheme had also been filed.

7. We are also of the opinion that after entire payment of conversion charges was made on 16th February, 2001, DDA should be given the benefit of six months' time for verification and scrutiny of the

documents and processing the case for refund and conversion of the property from leasehold to freehold. Thus, period upto 31st August, 2001 stands explained and benefit can be given to DDA.

8. However, there is no justification and reason after 31st August, 2001 for DDA not to refund the unearned increase of Rs.18,35,646/-, once the conversion amount/charges in full had been paid on 16th February, 2001. Conversion Scheme was applicable to the appellants and payment of transfer charges was required to be made by the appellants in terms of the Scheme. DDA received application and first installment under the Scheme on 24th August, 1999 and the last payment on 16th February, 2001. No objection or rejection of the application was communicated by the DDA to the appellant. The judgment of the learned Single Judge in this regard is elucide and categorical. Transfer charges payable under the Scheme were accepted and DDA has also accepted the judgment of the learned Single Judge and thus has admitted it's liability to refund Rs.18,35,646/-. The result was that DDA was withholding payment of Rs.18,35,646/-, which was paid towards unearned increase after 16th February, 2001 and at the same time had also received full payment

towards conversion charges including transfer charges on unearned increase paid at reduced rates as per the Scheme. Therefore, we feel that for the period after 1st September, 2001 (i.e. six months after 16th February, 2001), the appellants should be paid interest on Rs.18,35,646/- till the respondent-DDA made payment/refunded the said amount. It is well settled that when a party has wrongly retained money payable to another person and the said party is wrongly deprived from use and benefit of money because of failure of the debtor to pay, interest can be awarded to the wronged party. We may also note that inflation every year reduces the purchasing power of money, which gets diminished. Interest is paid to compensate the person to whom payment is to be made as a result of fall in value or purchasing power of money.

9. In ***Ghaziabad Development Authority versus Union of India,*** reported in (2000) 6 SCC 113**,** the Supreme Court awarded interest @ 12% per annum to meet ends of justice as the authority was found to be at fault. This was in spite of the fact that as per the brochure, the said authority was not liable to pay any interest on refund of money. In ***South Eastern Coalfields Limited versus State of M.P.,*** reported in (2003) 8 SCC 648**,** it was observed that the applicability of the rule to award

interest in equity is attracted on the existence of a state of circumstances being established, which justify exercise of such equitable jurisdiction and such circumstances can be many. Moreover in the present case, the appellants had also written letters dated 20th February, 2004 and 16th July, 2004 for refund and payment of interest. The said letters constitute notice under Section 3 of the Interest Act, 1978. Interest is also payable in terms of Interest Act, 1978.

10. Keeping in view the rate of inflation during the period 2001-2005, we feel that it will be appropriate if DDA pays interest @ 7% per annum w.e.f. 1st September, 2001 till the date DDA refunded Rs.18,35,646/- to the appellants. The aforesaid payment will be made within a period of six weeks from today.

11. The Appeal is accordingly disposed of. In the facts and circumstances of the case there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

SEPTEMBER 03, 2007.
P/VKR